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9 ANDREA MATUA



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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ANDREA MATUA,

Plaintiff,

v.

THE MCKELLAR GROUP, LLC f/k/a
MCKELLER & ASSOCIATES GROUP,
INC.,

Defendant.

SA CV14-183 AG (ANX)

Case No.:

PLAINTIFF'S COMPLAINT

PLAINTIFF'S COMPLAINT

Plaintiff, ANDREA MATUA ("Plaintiff"), through her attorney, AGRUSS LAW FIRM, LLC, alleges the following against Defendant, THE MCKELLAR GROUP, LLC f/k/a MCKELLER & ASSOCIATES GROUP, INC. ("Defendant"):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. ("FDCPA").
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. ("RFDCPA").

JURISDICTION AND VENUE

3. This Court has jurisdiction under 28 U.S.C. §§1331, 1367, and 15 U.S.C. §1692k.

1 telecommunication, such as by telephone and facsimile.

2 17. Defendant acted through its agents, employees, officers, members, directors, heirs,
3 successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

4 **FACTUAL ALLEGATIONS**

5 18. Defendant is attempting to collect a consumer debt from Plaintiff.

6 19. The alleged debt owed arises from transactions for personal, family, and household purposes.

7 20. Within in the last year, Defendant was hired to collect on the alleged debt.

8 21. Defendant called Plaintiff on Plaintiff's telephone at 714-818-82xx in an attempt to collect on
9 the alleged debt.

10 22. Within one (1) year of Plaintiff filing this Complaint, Defendant communicated with Plaintiff
11 in an attempt to collect on the alleged debt.

12 23. Within one (1) year of Plaintiff filing this Complaint, Defendant left Plaintiff at least one
13 voicemail message regarding the alleged debt.

14 24. Within one (1) year of Plaintiff filing this Complaint, Defendant left the following voicemail
15 message for Plaintiff, "This message is intended for Andrea Matua. My name is Michelle
16 Mario and I'm contacting you in reference to a complaint that has been forwarded to my
17 office. If you wish to discuss the pending actions that may be filed against you, you can
18 contact the firm handling your file directly at 885-872-6990 and reference your file number
19 714-85. Thank you."

20 25. The telephone number of 855-872-6990 is one of Defendant's telephone numbers.

21 26. Defendant's collector that left the message transcribed in paragraph 24 was working within
22 the scope of her employment when she communicated with Plaintiff in an attempt to collect a
23 debt.
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1 27. Defendant's message for Plaintiff does not state that the call is from The McKeller Group,
2 LLC.

3 28. Defendant's message for Plaintiff does not state that the collector is attempting to collect a
4 debt.

5 29. Defendant's collector that left the message transcribed in paragraph 24 is familiar with the
6 FDCPA.

7 30. Defendant's collector that left the message transcribed in paragraph 24 knows the FDCPA
8 requires debt collectors to identify the company's name when placing a telephone call.

9 31. Defendant's collector that left the message transcribed in paragraph 24 knows the FDCPA
10 requires debt collectors to state that the communication is an attempt to collect a debt when
11 leaving consumers a voicemail message.

12 32. Defendant's collector that left the message transcribed in paragraph 24 threatened to take
13 legal action against Plaintiff.

14 33. At the time Defendant's collector left the message for Plaintiff transcribed in paragraph 24,
15 Defendant did not intend to take legal action against Plaintiff.

16 34. As of the date Plaintiff filed this Complaint, Defendant has not taken legal action against
17 Plaintiff.

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21 **COUNT I**
22 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

23 35. Defendant violated the FDCPA based on the following:

24 a. Defendant violated §1692d of the FDCPA by engaging in conduct that the natural
25 consequences of which was to harass, oppress, and abuse Plaintiff in connection with
26 the collection of an alleged debt;

27 b. Defendant violated §1692d(6) of the FDCPA by placing telephone calls without
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1 meaningful disclosure of the caller's identity when Defendant left Plaintiff a message
2 that failed to state that call was from The McKellar Group, LLC;

3 c. Defendant violated §1692e of the FDCPA by using false, deceptive, or misleading
4 representations or means in connection with the collection of a debt when Defendant
5 failed to identity that the call was from The McKellar Group, LLC, failed to state that
6 the call was an attempt to collect a debt, and threatened to take legal action against
7 Plaintiff;

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9 d. Defendant violated §1692e(5) of the FDCPA by threatening to take legal action
10 against Plaintiff even though Defendant did not intend to take such action against
11 Plaintiff;

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13 e. Defendant violated §1692e(10) of the FDCPA by using false representation or
14 deceptive means in connection with the collection of the alleged debt when Defendant
15 failed to state that the call was an attempt to collect a debt, and threatened to take
16 legal action against Plaintiff; and

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18 f. Defendant violated §1692e(11) of the FDCPA when Defendant left Plaintiff a
19 voicemail message that did not state the communication was an attempt to collect a
20 debt.

21 36. Defendant's acts as described above were done intentionally with the purpose of coercing
22 Plaintiff to pay the alleged debt.

23 37. As a result of the foregoing violations of the FDCPA, Defendant is liable to Plaintiff for
24 statutory damages, and costs and attorney's fees.
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1 WHEREFORE, Plaintiff, ANDREA MATUA, respectfully requests judgment be entered
2 against Defendant, THE MCKELLAR GROUP, LLC f/k/a MCKELLER & ASSOCIATES GROUP,
3 INC., for the following:

4 38. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C.

5 1692k;

6 39. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15

7 U.S.C. 1692k; and

8 40. Any other relief that this Honorable Court deems appropriate.

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10 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES**
11 **ACT**

12 41. Plaintiff repeats and re-alleges paragraphs 1-34 of Plaintiff's Complaint as the allegations in
13 Count II of Plaintiff's Complaint.

14 42. Defendant violated the RFDCPA based on the following:

15 a. Defendant violated the §1788.10(f) of the RFDCPA by threatening to take legal
16 action against Plaintiff even though Defendant did not intend to take such action
17 against Plaintiff;;

18 b. Defendant violated the §1788.11(b) of the RFDCPA by placing telephone calls
19 without meaningful disclosure of the caller's identity when Defendant left Plaintiff a
20 message that failed to state the call was from The McKeller Group, LLC;

21 c. Defendant violated the §1788.13(j) of the RFDCPA by falsely representing that a
22 legal proceeding has been, is about to be, or will be instituted unless payment of a
23 consumer debt is made; and

24 d. Defendant violated the §1788.17 of the RFDCPA by continuously failing to comply
25 with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 et seq.
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1 WHEREFORE, Plaintiff, ANDREA MATUA, respectfully requests judgment be entered
2 against Defendant, THE MCKELLAR GROUP, LLC f/k/a MCKELLER & ASSOCIATES GROUP,
3 INC., for the following:

4 43. Statutory damages of \$1,000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act,
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6 Cal. Civ. Code §1788.30(b),

7 44. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices
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9 Act, Cal. Civ Code § 1788.30(c), and

10 45. Any other relief that this Honorable Court deems appropriate.

11 RESPECTFULLY SUBMITTED,

12 DATED: January 28, 2014

13 AGRUSS LAW FIRM, LLC

14 By: 

15 Michael S. Agruss
16 Attorney for Plaintiff
17 ANDREA MATUA
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